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Cases, Regulations, and Statutes

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method depreciation eligibility for property placed in service after 1990. **I.R.C. § 179(d)(1), as amended by RRA 1990, Sec. 11801**. The term Section 1245 property, while similar to the definition of Section 38 property, is significantly more narrow in several respects and more expansive in a few instances. Thus, horses are not ineligible for expense method depreciation under the new rules. Moreover, the "wash sale" rules for livestock which appeared in the definition of Section 38 property are not part of the definition of Section 1245 property. **I.R.C. § 48(a)(6) before amendment by RRA 1990**. Likewise, the Section 1245 property definition does not include mention of (1) eligibility of elevators and escalators, (2) the special rules for property outside the United States, (3) property used for lodging, (4) property used by certain tax exempt organizations, (5) property used by governmental units or foreign persons, (6) property completed abroad or predominantly of foreign origin, (7) and boilers fueled by oil or gas. **I.R.C. §§ 48(A)(1)(C),(2), (3), (4), (5), (6), (10) before amendment by RRA 1990**. The Section 1245 property definition, on the other hand, excludes more items subject to amortization that the Section 38 property definition. **Compare I.R.C. § 1245(a)(3)(C) with I.R.C. § 48(a)(8)**.

Both definitions include personal property (although the Section 38 definition refers to tangible personal property); single purpose agricultural and horticultural structures; and "other tangible property" used for storage, for research or as an integral part of manufacturing, production or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services.

For many farm and ranch taxpayers the 1990 amendment will make no difference in eligibility for expense method depreciation. However, some taxpayers will find the new definition to be quite different as applied to their unique factual situation.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

OPEN AND NOTORIOUS. Prior to the plaintiff's or defendant's ownership of their neighboring land, the prior owner of the defendant's land had sold a strip of land which bordered the plaintiff's land but the purchaser of the strip fenced off a strip so far on to the plaintiff's land that a portion of the plaintiff's land was on the defendant's side of the strip. The defendant's use of the disputed area included planting and harvesting trees, cutting a road, hunting and posting "no trespassing" signs. The defendant also repaired much of the fence on the defendant's side of the strip such that the fence could contain cattle. The court held that the defendant had open and notorious occupation of the disputed area and that the area had been enclosed by a substantial fence, even though part of the fence was in disrepair. **Klinefelter v. Dutch, 467 N.W.2d 192 (Wis. App. 1991)**.

ANIMALS

HORSES. The plaintiff brought an action against the owner of horse riding stables for personal injuries resulting from a fall from a horse. The court held that the defendant was not liable because the defendant had no prior knowledge of the horse's alleged vicious propensity. The court found that a thoroughbred horse was not inherently dangerous. **Landes v. H.E. Farms, Inc., 564 N.Y.S.2d 151 (App. Div. 1991)**.

BANKING

GOOD FAITH. The plaintiffs had borrowed money from the defendant for their dairy operation for several years but had decided to quit the dairy operation by participating in the federal Dairy Termination Program. As part of a request to renegotiate the loan with the defendant in light of the possible DTP participation, the plaintiffs submitted a proposal for restructuring their loans but the defendant rejected the proposal. The plaintiffs argued that the defendant had violated a good faith duty to consider the loan restructuring proposal. The plaintiffs argued that the duty of good faith dealing arose because of the longstanding relationship between the parties. The court held that no good faith duty arose from the course of dealing between the parties and was not required by the loan agreements between the parties. **Badgett v. Security State Bank, 807 P.2d 356 (Wash. 1991), *rev'g* 56 Wash. App. 872, 786 P.2d 302 (1990)**.

BANKRUPTCY

GENERAL

EXEMPTIONS. The debtors claimed an exemption in their interest as vendees of a land contract. The exemption was not objected to but the trustee applied for judicial approval to sell the property with distribution of the proceeds to the land contract vendor, to the debtors in the amount of their claimed exemption and to the estate. The court held that the exemption caused the land to revert to the debtors and the land was no longer estate property subject to sale by the trustee. **Seifert v. Selby, 125 B.R. 174 (E.D. Mich. 1989)**.

The debtor was not allowed an exemption for firearms as household goods. The court allowed an exemption for the debtor's interest in a pension plan where the plan was less than $8,000 and the debtor would not accumulate substantial funds beyond what would be normal or anticipated. ***In re* Coffman, 125 B.R. 238 (W.D. Mo. 1991)**.

The debtor's interests in three ERISA qualified profit sharing plans were included in the bankruptcy estate and were not exempt because the plans were not reasonably necessary for the debtor's maintenance and support. ***In re* Davis, 125 B.R. 242 (Bankr. W.D. Mo. 1991)**.

The debtor received money from a third party's insurance company in settlement of a personal injury action resulting from an automobile accident. The court held that the money was not exempt because Arizona had no exemption for personal injury claims and Ariz. Rev. Stat. § 33-1126(A)(3) did not apply where the money was not paid under an employer's insurance plan to the debtor as an employee. ***In re* Hoffpauir, 125 B.R. 269 (Bankr. D. Ariz. 1990)**.

As part of a divorce property settlement, the debtors agreed to sell the homestead and share the proceeds. The house was sold pre-petition and the proceeds were placed in separate accounts. The debtors each claimed a homestead exemption in their separate bankruptcy cases. The court held that the debtors could not exempt the proceeds of the pre-petition voluntary sale of the homestead. ***In re* Blair, 125 B.R. 303 (Bankr. D. N.M. 1991)**.

CHAPTER 11

ELIGIBILITY. The owner of an apartment building, ranch, industrial plant and office building transferred the assets to a trust with the owner as trustee and with the purpose to manage the properties until the trustee's children could take over management of the properties. The court held that the trust was not eligible for Chapter 11 bankruptcy because the beneficiaries had not contributed to the assets or management of the businesses owned by the trust and, although the trust did not prohibit the transfer of interests in the trust, the trust was formed with the intent to keep the assets in the trustee's family. ***In re* BKC Realty Trust, 125 B.R. 65 (Bankr. D. N.H. 1991)**.

PLAN. Under the debtors' plan to pay a secured creditor, one parcel of farmland would be sold under an existing purchase contract with the proceeds paid to the secured creditor, another parcel would be immediately surrendered to the secured creditor and the third parcel would be held for sale for 300 days and surrendered to the secured creditor if not sold within that time. The third parcel was leased on a crop share basis with the debtor receiving the rent. Although the creditor was oversecured on the land involved, the court held that the 300 day delay and partitioning of the farmland placed the risk of loss of value on the secured creditor and the plan was not confirmed. The court noted that during the 300 days of deferral of payment on the third parcel, the secured creditor would not receive any interest or principal payments on the remaining amount owed, yet the debtor would be receiving rent. **Matter of Martindale, 125 B.R. 32 (Bankr. D. Idaho 1991)**.

CHAPTER 12

ATTORNEY FEES. During the pendency of the debtors' Chapter 12 plan, the debtors hired an attorney to represent them in a real estate foreclosure proceeding involving land which was administered in the bankruptcy case. The attorney did not request court approval for the services. The court held that the attorney fees paid for the services were estate property and were to be returned to the trustee because the attorney failed to acquire prior court approval. **Matter of Samford, 125 B.R. 230 (E.D. Mo. 1991)**.

PLAN. In confirming the debtors' Chapter 12 plan, the Bankruptcy Court had required the debtors to make all payments on secured claims through the trustee, did not reduce a secured claim by the cost of liquidating the collateral, and required the debtors to retain their stock in the secured creditor land bank. The District Court reversed the Bankruptcy Court's order for payments only through the trustee and provided ten factors to be weighed in determining whether the debtor could make payments directly to secured creditors without payment of the trustee fee. The court also reversed the lower court and held that a secured claim could be reduced by the hypothetical costs of liquidating the collateral, even where the debtor would retain the collateral. The court upheld the order requiring the debtor to retain the land bank stock. ***In re* Overholt, 125 B.R. 202 (S.D. Ohio 1990)**.

CHAPTER 13

PLAN. The debtor's Chapter 13 plan provided for payments on a promissory note secured by the debtor's residence under the terms of the note and payment of an arrearage on the note plus interest over the 36 months of the plan. The secured creditor had accelerated the note pre-petition. The court held that the de-acceleration of the note and payment of the arrearage over the plan length was not an unacceptable modification of the creditor's rights under Section 1322(b)(2). ***In re* Smith, 125 B.R. 240 (Bankr. W.D. Mo. 1991)**.

FEDERAL TAXATION

AUTOMATIC STAY. The IRS had filed a pre-petition levy on the debtor's wages which the IRS failed to lift upon the debtor's filing for bankruptcy. In addition, a second levy was made post-petition after the IRS received notice of the bankruptcy filing. Although the IRS returned the funds received under the second levy, the court held that the 90 day period taken to return the funds was unreasonable and allowed the debtor 11 percent interest on the funds from the date of levy until the date of the refund. The court also allowed the debtor 11 percent interest on funds levied under the pre-petition levy but received post-petition. **Matter of Fernandez, 125 B.R. 317 (Bankr. M.D. Fla. 1991)**.

CLAIMS. When the IRS failed to file a claim in the debtor's bankruptcy case, the debtor filed a claim for personal income tax and employee withholding taxes owed by the debtor. The IRS later filed an amended claim increasing the amounts owed in both categories. The court held that the Bankruptcy Court had the discretion to allow the amendment and did not abuse the discretion in allowing the amendment where the amendment only increased the amount of the claim. ***In re* Kolstad, 928 F.2d 171 (5th Cir. 1991), *aff'g unrep. D. Ct. dec. aff'g* 101 B.R. 492 (Bankr. S. D. Tex. 1989)**.

The IRS had filed a timely claim for taxes owed by the debtors for one pre-bankruptcy tax year. Although the debtors had listed other disputed tax claims on their bankruptcy schedules, the IRS agent in charge of the case failed to discover the other claims and the internal procedures of the IRS failed to discover the error until after the claims bar date. The IRS filed an amended claim for the disputed taxes which involved other pre-bankruptcy taxable years.

The court held that the amended claim was not allowed because the claim involved different taxes and the IRS failed to show excusable neglect for failing to file the amended claim on time. ***In re* Nalle, 125 B.R. 164 (Bankr. W.D. Tex. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The court summarily held that the holding of *Zajac v. Federal Land Bank, 909 F.2d 1181 (8th Cir. 1990)* (no private right of action to enforce section 2202a of the Agricultural Credit Act of 1987), was not limited to Section 2202a of the Act. **Euerle Farms v. Farm Credit Services of St. Paul, 928 F.2d 274 (8th Cir. 1991)**.

The defendants asserted as a defense in a foreclosure action brought by the plaintiff that the plaintiff failed to comply with the plaintiff's loan restructuring and forbearance regulations. The court held that such a defense was available and allowed the defendants discovery of documents from the plaintiff to support the defense. **Farm Credit Bank of Spokane v. Parsons, 758 F.Supp. 1368 (D. Mont. 1990)**.

The defendants challenged the plaintiff's compliance with the plaintiff's farm loan restructuring regulations, claiming that the plaintiff used an erroneous valuation of the defendants' farm property in determining that restructuring of the defendant's loan was not required. The court held that the defendants' mere assertion of another valuation of the property was insufficient to demonstrate an arbitrary decision by the plaintiff in not restructuring the loan. **Farm Credit Bank of Spokane v. Nilsen, 758 F.Supp. 1372 (D. Mont. 1990)**.

BRUCELLOSIS. The APHIS has announced an interim rule changing the status of Indiana from a Class Free to Class A state. **56 Fed. Reg. 19545 (April 29, 1991)**.

FARM CREDIT SYSTEM. The plaintiffs, production credit associations, challenged as unconstitutional 12 U.S.C. § 2278b-9 which required a purchase of "stock" from the Farm Credit System Financial Assistance Corporation. The court held that the requirement did not violate the Fifth Amendment because the stock purchase requirement was rationally related to the legitimate purpose of revitalizing the Farm Credit System and was not an unconstitutional taking because the PCA's should have expected to be required to provide additional financial help for the system in times of economic stress. **Colorado Springs Prod. Credit Ass'n v. Farm Credit Admin., 758 F. Supp. 6 (D. D.C. 1991)**.

GRAIN STANDARDS. The FGIS has issued proposed rules to establish grain standards for Canola. **56 Fed. Reg. 20374 (May 3, 1991)**.

PACKERS AND STOCKYARDS ACT. The plaintiff was a surety for the bond held by a packer subject to the bond requirements of the P & S Act and had paid unpaid sellers of hogs to the packer under the bond in exchange for the sellers' rights in the statutory trust fund. The defendant had extended a line of credit to a customer of the packer and had obtained an agreement with the packer under which the packer subordinated its interest in accounts receivables of the customer to the security interest of the defendant. The court held that the plaintiff surety had acquired the hog sellers' rights in the P&S Act statutory trust and that the agreement of the packer to subordinate its interests in the customer's accounts receivable was ineffective to remove those receivables from the trust. The court also held that the customer was not entitled to a share of the statutory trust funds because the customer purchased dressed hogs from the packer. **Liberty Mut. Ins. Co. v. Bankers Trust Co., 758 F.Supp. 890 (S.D. N.Y. 1991)**.

PRICE SUPPORT-COTTON. The CCC has issued proposed regulations concerning the price support program for cotton to comply with FACTA 1990. Among the changes, the proposed regulations provide that if a producer executes an option to purchase cotton under loan and the title, risk of loss and beneficial interest in the cotton remain with the producer until the buyer exercises the option, the producer will not be considered to have divested the beneficial interest in the cotton. The primary purpose of the provision is to prevent the cotton from being included in the buyer's bankruptcy estate. **56 Fed. Reg. 20554 (May 6, 1991)**.

PRICE SUPPORT-TOBACCO. The ASCS has announced that the price support level for 1991 burley tobacco is $1.584 per pound. **56 Fed. Reg. 19973 (May 1, 1991)**. The ASCS has announced that the price support level for 1991 flue-cured tobacco is $1.528 per pound. **56 Fed. Reg. 19975 (May 1, 1991)**.

FEDERAL ESTATE AND GIFT TAX

GIFT. Two taxpayers owned 100 percent of the corporation's stock and the stock was subject to a buy-sell agreement which determined the price at which stock must first be offered to the other shareholder before sale to any other party. The corporation established an ESOP and purchased stock for the ESOP from one of the shareholders at the fair market value which exceeded the option price under the buy-sell agreement and the non-selling shareholder agreed to waive the shareholder's right of first purchase and the buy-sell restrictions on the stock purchased by the ESOP. The IRS ruled that the waiver of the right of first purchase at the lower price resulted in a gift to the selling shareholder of the difference between the selling price and the price set by the buy-sell agreement. **Ltr. Rul. 9117035, Jan. 25, 1991**.

The taxpayer made several transfers of money to the taxpayer's children, followed by loans of the same amount from the children to the taxpayer. The IRS disallowed deductions for the interest paid on the loans. The court held that the transfers of money to the children lacked donative intent and the transfers were only schemes to create interest deductions. **Muserlian v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 60,066 (2d Cir. 1991)**.

INSTALLMENT PAYMENT. The taxpayers, brother and sister, received partial interests in trust in commercial property which was held by the decedent as a closely-held business. The decedent's estate elected installment payment of federal estate tax. Upon distribution of trust principal, the taxpayers were to receive partial interests in all trust property. Instead, the taxpayers agreed to a distribution which would distribute undivided interests in each property to the taxpayers. In equalization of the shares, the sister received non-business property in exchange for the closely-held property. The sister then transferred the property to a grantor trust. The IRS ruled that the exchanges of property would not cause recognition of gain except as to boot received to equalize the taxpayers' shares. The nonrecognition was subject to the related party rule. The distribution of the sister's share to a grantor trust would also not cause recognition of gain unless the trust further transferred the property or the trust terminated as a grantor trust. The IRS ruled that the exchange of partial interests in the closely-held property between the taxpayers was not a disposition causing acceleration of the installment payments of estate tax. The IRS also ruled that the less than 50 percent disposition of closely-held property by the sister for non-closely-held property would not cause acceleration of federal estate tax but would be added to any future dispositions for purposes of the 50 percent test. **Ltr. Rul. 9116008, Jan. 15, 1991**.

MARITAL DEDUCTION. The decedent's will bequeathed to the surviving spouse the minimum amount of estate property that would result in the lowest amount of federal estate tax. The executor claimed a specific sum as a marital deduction but did not list all of the specific property on Schedule M, Part 2 which would be included in the marital deduction but the executor included a statement that the executor elected to treat as QTIP a fractional portion of the property passing to the marital trust in the amount necessary to reduce the federal estate tax to zero. The IRS ruled that because of the operation of the formula marital deduction bequest and the fractional QTIP election, the specific assets need not be identified on Schedule M, Part 2. **Ltr. Rul. 9116003, Dec. 27, 1990**.

In the decedent's will, the residuary estate was to pass in trust to the surviving spouse and to qualify for the marital deduction to the extent allowed by law and to the extent elected by the estate executor. In filing the estate tax return, the executor did not check the box in Schedule M indicating any QTIP election and did not list the property elected as QTIP on Schedule M, Part 2 (Form 706 1987). The executor did deduct the residuary trust property from the gross estate in calculating the estate tax but only listed property <u>not</u> subject to a QTIP election. The IRS ruled that the QTIP election was invalid. **Ltr. Rul. 9117007, Jan. 11, 1991**.

SPECIAL USE VALUATION. In making a special use valuation election on the estate return, the estate included appraisals of the farmland made by the county tax assessor's office and a computation that appeared to use average cash rentals and average real estate taxes but without details of the computation. The IRS requested "copies of written appraisals" and "accrual comparable rentals and their ad valorem tax data" and the estate provided (1) notarized affidavits of cash rents, (2) county tax valuation cards, (3) an affidavit from the county agricultural extension office identifying the comparables used, (4) an affidavit from the county tax appraiser indicating the standards for appraising agricultural land, and (5) county tax valuation cards. The IRS ruled that the special use election was valid because the election contained satisfactory appraisals and the valuation method used and the estate provided substantiating data when requested. The IRS noted that although the valuation method was satisfactory for the election, the special use valuation claimed on the estate return may not be acceptable to the IRS; thus, a valid election does not require an accurate valuation, but does require an acceptable method with substantiating data. **Ltr. Rul. 9117006, Dec. 31, 1990**.

The taxpayer owned two parcels of land operated as a dairy. Under the taxpayer's will, the land will pass to two children. In 1977, one of the children changed the operation to a horse boarding operation and was responsible for producing hay, feeding the horses, care of machinery and repairing improvements. In 1981, the other child changed the operation of some of the land to a christmas tree farm and was responsible for planting, care and harvesting of the trees. The operations continued to the present. The IRS held that the children would be qualified heirs and the property would be qualified real property eligible for special use valuation. **Ltr. Rul. 9117046, Jan. 29, 1991**.

TRANSFERS WITHIN THREE YEARS OF DEATH. The decedent established a revocable trust under which the trustee was to pay trust income to the decedent or to whomever the decedent directed and the decedent had the power to withdraw trust principal. The remainder of the trust was payable to trusts for the decedent's descendants. Within the three years before the decedent's death, the decedent made various gifts of trust property from the trust to children and grandchildren. The IRS ruled that the gifts made within three years of the decedent's death were includible in the decedent's gross estate to the extent the gifts were paid from trust income. Payments of trust income to persons other than the decedent were considered a relinquishment of the power to revoke the trust. However, the gifts were not includible to the extent made from trust corpus, because trust corpus could only be distributed to the decedent; thus, those gifts were considered made by the decedent separate from any revocation of the trust. **Ltr. Rul. 9117003, Oct. 16, 1990**.

The decedent established a revocable trust with the decedent as beneficiary and trustee with the power to make distributions of trust property to the descendants of the decedent. The trust was amended to create co-trustees. The decedent transferred some trust proeprty to other trusts for family memebers, and, after the decedent became mentaly incompentent, the co-trustees made further transfers to those trusts. The court held that the transfers made by the decedent within three years of death were not included in the decedent's gross estate because the transfers were considered to be made to the decedent and then made to the donees. The transfers by the co-trustees, however, were included int he decedent's gross estate becuase the transfers were considered a relinquishment of the decedent's power to revoke the trust as to the assets transferred. **Est. of Jalkut v. Comm'r, 96 T.C. No. 27 (1991)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has ruled that a corporation with employees who perform veterinary services is a qualified personal service corporation eligible to use the cash method of accounting and eligible to use a taxable year other than a calendar year if the corporation establishes a business purpose for the non-calendar taxable year. **Rev. Rul. 91-30, I.R.B. 1991-19, 4**.

The taxpayers merged three corporations: (1) a C corporation using the accrual method of accounting, (2) a family farm C corporation required to change from a cash method to accrual, the farm price method, and maintain a suspense account because of gross receipts in excess of $25 million, and (3) an S corporation using the accrual method. The merged corporation elected S corporation status. The IRS ruled that the suspense account would not be recaptured but the resulting corporation would be required to maintain the account and would be subject to recapture. In the short taxable year as an S corporation, the gross receipts from farming would be annualized for purposes of the accounting method required under Section 447(i)(4). Any income included in gross income with respect to the suspense account would be treated as recognized built-in gain. **Ltr. Rul. 9117055, Jan. 30, 1991**.

COOPERATIVES. A tax-exempt farm cooperative was audited and found to have dealt with nonmember producers/patrons on a noncooperative basis. The cooperative requested that the loss of tax-exempt status based on this finding be applied prospectively from the date of notification of loss of tax-exempt status. The IRS ruled that the loss of tax-exempt status applied to the entire taxable year. **Ltr. Rul. 9114002, Nov. 27, 1990**.

DISASTER LOSSES. The IRS has announced a list of areas, designated by the President as disaster areas, in which taxpayers are eligible to elect special treatment of losses from disasters under I.R.C. § 165(i). **Ann. 91-66, I.R.B. 1991-17, 29**.

INTEREST. Two shareholders of an S Corporation purchased some of the stock held by the other shareholders and the corporation purchased the remaining shares of the other shareholders in cash and promissory notes. The IRS ruled that the following method of allocation of interest under the promissory notes was reasonable:

1. At the end of each month the book values of the corporation's assets were segregated into classes identified as business assets, passive activity assets, investment assets and personal assets.
2. A ratio equal to the total book value of assets in each class to the total book value of all assets was computed each month.
3. An average ratio was computed based on the number of months in the taxable year of the corporation. **Ltr. Rul. 9116008, Jan. 10, 1991**.

LIKE-KIND EXCHANGES. The IRS has adopted as final regulations governing the limitations on deferred like-kind exchanges. See 1 **Agri. L. Digest** 106 (1990). **56 Fed. Reg. 19933 (May 1, 1991)**.

PARTNERSHIPS

BASIS OF PARTNERSHIP PROPERTY. The taxpayer sold a 24 percent interest in a partnership to a partnership owned by the taxpayer's spouse and children for a promissory note for $2.4 million, payable in two balloon payments in 12 years, with only interest of 6 percent payable monthly for the life of the note. The selling partnership increased the basis of 24 percent of its assets to equal the purchase price of the partnership interest and calculated depreciation based on the new basis. The court held that the increase in basis of the selling partnership assets was limited to the fair market value of those assets at the time of sale, with the remaining amount of the purchase price to be allocated to non-depreciable assets. **Muserlian v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 60,066 (2d Cir. 1991)**.

PRE-PRODUCTION EXPENSES. The IRS has withdrawn G.C.M. 39791 which held that the cost of fertilizer applied to land with standing trees and bare land to be used for reforestation must be amortized over the fertilizer's expected useful life. **G.C.M. 39844**.

RESPONSIBLE PERSON. Two brothers formed a corporation to operate a plumbing business with the taxpayer as plumber and the other brother as manager. The taxpayer had authority to write corporate checks and wrote many for dividend payments to himself. Although the taxpayer knew little about accounting and management of corporations, the accountant eventually informed the taxpayer of the unpaid employment taxes and the potential for the taxpayer's personal liability for the taxes. The court held that the taxpayer was a responsible person who willfully failed to pay federal employment taxes and was subject to the 100 percent penalty under Section 6672. The court held that the taxpayer had the authority to write corporate checks and could not delegate that authority to escape responsibility for the taxes where the taxpayer continued to write checks for himself. Also, the taxpayer could not use the lack of knowledge of accounting or tax law where the taxpayer could learn such things from the corporate accountant. **Peterson v. U.S., 758 F.Supp. 1209 (N.D. Ill. 1990)**.

The taxpayer, a shareholder, director and president of a corporation, was held to be a responsible person liable for the corporation's failure to pay employment taxes. The taxpayer was found to have been active in the daily operation of the company and to have authority to and did co-sign company checks. The taxpayer's liability was not removed by assigning payroll matters to the company's accountant, where the accountant did not have the authority to write checks. **Peek v. U.S., 91-1 U.S. Tax. Cas. (CCH) ¶ 50,208 (D. Md. 1991)**.

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S CORPORATIONS

AFFILIATED GROUP. The corporation had three subsidiaries. The first subsidiary had not acquired any assets and was not formally activated. The second subsidiary sold all of its assets to the parent corporation prior to the corporation's election for S corporation status. The third subsidiary had also discontinued business, sold all assets, closed all accounts and paid all liabilities prior to the S corporation election. However, the merger of the subsidiaries under state law was not completed until after the S corporation was effective. The IRS ruled that the subsidiaries were sufficiently inactive to allow the parent corporation to elect S corporation status. **Ltr. Rul. 9116001, Nov. 16, 1990**.

SHAREHOLDER. The taxpayer received stock in an S corporation as part of a divorce property settlement prior to the end of the corporation's taxable year. The taxpayer listed the stock on Form 1120S as owned by the taxpayer and the taxpayer's former spouse's Form 1120S reflected the termination of ownership of the stock. The court held that the taxpayer was the beneficial owner of the stock and liable for income tax on the stock's share of corporation income. **Willie v. Comm'r, T.C. Memo. 1991-182**.

TRAVEL EXPENSES. The taxpayer originally owned a swimming pool business in Massachusetts and started a second horse breeding and racing business in Florida. The taxpayer spent approximately six consecutive months in each location. The Tax Court had held that the taxpayer had two tax residences and that the travel and living expenses attributable to the horse operation were not deductible as business expenses. The appellate court held that Section 162 contemplated only one residence for tax purposes and that the travel and living expenses attributable to one of the businesses was eligible for a business deduction; the court did not determine which residence was the tax residence. **Andrews v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,211 (1st Cir. 1991),** ***vac'g and rem'g*** **T.C. Memo. 1990-391**.

MORTGAGES

REDEMPTION. The plaintiff had a mortgage on land owned by the debtors and obtained a judgment of foreclosure. At the sheriff's sale, the land was purchased by a third party. Within the period of redemption, the plaintiff filed a notice of redemption, citing its deficiency judgment as a lien against the property. The court held that the plaintiff had no right of redemption under Kansas law because the mortgage was extinguished by the foreclosure decree and only pre-foreclosure lien holders had a right to redeem. **Federal Land Bank of Wichita v. Brown, 807 P.2d 702 (Kan. Ct. App. 1991)**.

CITATION UPDATES

Thomas v. U.S., 758 F.Supp 529 (E.D. Mo. 1991) (profit motive), see p. 75 *supra*.

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